

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LULA WILLIAMS, ET AL.,

Plaintiffs,

v.

BIG PICTURE LOANS LLC, et al.,

Defendants.

Case No. 17-mc-80166-SVK

**ORDER TRANSFERRING
DEFENDANT MATT MARTORELLO'S
MOTION TO QUASH PLAINTIFFS'
SUBPOENAS TO NON-PARTY
ARANCA US, INC. TO THE EASTERN
DISTRICT OF VIRGINIA, PURSUANT
TO FED. R. CIV. P. 45(F)**

Re: Dkt. No. 1

RELEVANT BACKGROUND

Before the Court is the motion of Defendant Matt Martorello to quash or modify a subpoena served on third party Aranca US, Inc., which from the subpoena appears to be located in this district, by the Plaintiffs in an action pending in the Eastern District of Virginia. *Williams v. Big Picture Loans, LLC*, E.D.Va. Case No. 3:17-cv-00461-REP-RCY (the “Virginia action”). ECF 1.

In support of his motion to quash, Martorello argues that the subpoena to Aranca was improper because it seeks impermissible merits discovery, not jurisdictional discovery, in violation of the Federal Rules of Civil Procedure and the Virginia District Court’s discovery rulings. Specifically, Martorello argues that merits discovery has not opened in the Virginia action because the parties have not yet engaged in the conference required under Rule 26(f) and asserts that the Virginia judge has limited discovery to jurisdictional issues. Martorello also argues that some of the documents sought by Plaintiffs’ subpoena to Aranca contain information protected by the attorney-client privilege and the work product doctrine.

Plaintiffs oppose Martorello’s motion to quash, arguing that Martorello “misrepresents the

1 procedural posture and direct rulings from the [Virginia] district court on the scope of the
2 jurisdictional discovery.” ECF 7 at 16. Plaintiffs also argue that Martorello’s motion to quash is
3 untimely and that the information sought by the subpoena is not subject to privilege or work
4 product protection.

5 Third party Aranca, the recipient of the subpoena at issue, has not appeared or filed any
6 briefing in connection with the motion to quash.

7 In accordance with Civil Local Rule 7-1(b), the Court finds this matter suitable for
8 determination without oral argument. For the reasons discussed below, the Court ORDERS that
9 the motion to quash be transferred to the Eastern District of Virginia for decision in the underlying
10 Virginia action.

11 LEGAL STANDARD

12 Plaintiffs’ subpoena to third party Aranca was issued pursuant to Federal Rule of Civil
13 Procedure 45. Under Rule 45(d), the court may quash or modify a subpoena upon timely motion
14 on grounds stated in the rule. Fed. R. Civ. P. 45(d)(3). A motion to quash a subpoena must be
15 filed in the court for the district where compliance is required. Fed. R. Civ. P. 45(d)(3)(a). “When
16 the court were compliance is required did not issue the subpoena, it may transfer the motion under
17 this rule to the issuing court if the person subject to the subpoena consents or if the court finds
18 exceptional circumstances.” Fed. R. Civ. P. 45(f). If the compliance court transfers the subpoena
19 dispute to the issuing court, the matter may be transferred back to the compliance court for
20 enforcement. *Id.*

21 DISCUSSION

22 Martorello properly filed the motion to quash in this district because compliance was
23 required here. *See* ECF 7-2. However, the Court finds that the circumstances surrounding the
24 motion to quash are exceptional and warrant transfer of the motion to the Eastern District of
25 Virginia, the Court that issued the subpoena.

26 Whether to transfer a subpoena-related motion to the issuing court is committed to the
27 discretion of the court where compliance is required. *Youtoo Techs., LLC v. Twitter, Inc.*, No. 17-
28 mc-80006-JSC, 2017 WL 431751, at *1 (N.D. Cal. Feb. 1, 2017) (citing *Moon Mountain Farms,*

1 *LLC v. Rural Comm’y Ins. Co.*, 301 F.R.D 426, 429 (N.D. Cal. 2014)). The Advisory Committee
2 explained that “prime concern” underlying the 2013 amendments to Rule 45(f) is “avoiding
3 burdens on local nonparties subject to subpoenas.” Fed. R. Civ. P. 45(f) Advisory Comm. Note
4 (2013); *see also AngioScore, Inc. v. TriReme Med., Inc.*, No. 12-cv-3393-YGR (JSC), 2014 WL
5 6706873, at *2 (N.D. Cal. Nov. 25, 2014 (noting that “the amendments to the rule were designed
6 to protect the subpoenaed party”).

7 Here, the subpoenaed party, Aranca, has not participated in the briefing on the motion to
8 quash. The information presented to the Court indicates that Aranca is simply awaiting the
9 outcome of the parties’ jurisdictional and privilege fights and will comply with whatever a court
10 may order. *See* ECF 7-5 (correspondence from Aranca’s counsel indicating that it would withhold
11 purportedly privileged documents “pending the outcome of Bellicose’s Motion”). This discovery
12 fight, therefore, is between the parties to the Virginia action and properly belongs in that court. *See*
13 *Youtoo Techs.*, 2017 WL 431751, at *2. Transferring this motion to the Virginia district court will
14 not impose any burden on Aranca.

15 The Virginia district court is also better suited to decide the parties’ subpoena dispute. The
16 parties offer conflicting interpretations of the Virginia’s court’s September 1, 2017 order on
17 discovery and an October 16, 2017 conference call with that court. *Compare* ECF 3 at n.1
18 (Martorello’s argument that “Plaintiffs have never engaged in the conference required under Rule
19 26(f) prior to serving the subpoena on Aranca seeking merits discovery” and that “Plaintiffs have
20 been authorized to conduct discovery into limited jurisdictional issues raised by other defendants”)
21 and ECF 12 at 3 (Martorello’s argument that the Virginia court’s September 1, 2017 order
22 expressly limited the scope of discovery to jurisdictional issues) *with* ECF 7 at 16-17 (Plaintiffs’
23 argument that during the October 16, 2017 conference call, the Virginia court “overruled
24 objections to third party discovery” and explained “it’s perfectly all right to use any procedural
25 vehicle authorized by the Federal Rules of Civil Procedure in pursuit of the discovery about a
26 jurisdictional issue”). The Virginia district court is far better situated than this Court to determine
27 whether the subpoena to Aranca falls within current scope of discovery in the Virginia action.
28 Indeed, it appears that the issue of third party discovery has already been discussed with that court,

1 and thus transfer of this motion to the issuing court may help avoid inconsistent rulings on the
2 scope of discovery. *See Costco Wholesale Corp. v. Crane*, No. 16-mc-80189-JSC, 2016 WL
3 5394115, at *2 (N.D. Cal. Sept. 27, 2016) (citation omitted); *see also* Fed. R. Civ. P. 45(f)
4 Advisory Comm. Note (2013) (“In some circumstances ... transfer may be warranted in order to
5 avoid disrupting the issuing court's management of the underlying litigation, as when that court
6 has already ruled on issues presented by the motion or the same issues are likely to arise in
7 discovery in many districts.”). The Virginia court is also better situated to deciding the substance
8 of Martorello’s privilege and work product claims due to its familiarity with the issues and parties
9 in the underlying case. *See Moon Mountain Farms*, 301 F.R.D at 430.

10 **CONCLUSION**

11 For the reasons discussed above, the Court ORDERS that the Clerk of Court transfer this
12 case to the Eastern District of Virginia for consideration of Martorello’s motion to quash in the
13 pending matter of *Williams v. Big Picture Loans, LLC*, E.D.Va. Case No. 3:17-cv-00461-REP-
14 RCY. This Order disposes of Docket No. 1.

15 **SO ORDERED.**

16 Dated: February 5, 2018

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19 SUSAN VAN KEULEN
20 United States Magistrate Judge
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